

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 969/Mum/2023
(Assessment Year: 2012-13)**

Everest Cycle Mfg.Co, A-70, TTC, MIDC, Industrial Area, TB Road, Kopar Khairane, Navi Mumbai-400709. Maharashtra.	बनाम/ Vs.	ITO, Ward 28(1)(3), 3 rd Floor, Tower No. 6 Vashi Rly Stn Commercial Complex, Vashi Navi Mumbai-400703. Maharashtra.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABFE1144Q		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	None
प्रत्यर्थी की ओर से/Respondent by :	Ms. Kavita Kaushik.DR

सुनवाई की तारीख / Date of Hearing	12/06/2023
घोषणा की तारीख /Date of Pronouncement	14/06/2023

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC)/CIT(A), Delhi passed u/s 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. THAT, the impugned order dated 25/01/2023 issued u/s. 250 is passed against the basic principle of natural justice and audi alteram partem, since appellant was never informed about hearing before NFCA by Tax Consultant.*

2. THAT, the order dated 08/12/2016 issued AO itself is against the basic principle of nature of justice and against the various judgments of appellate authorities inasmuch as mentioned hereunder: -

a. Assessment Order dated 08/12/2016 was issued without disposing of the objection raised by the appellant during appellate proceedings.

b. The impugned reassessment proceedings were tantamounting to change of opinion since original assessment proceedings u/s143(3) was already passed on same set of pertaining to repair and maintenance expenses of Rs 17,22,390/- debited to profit and loss account are not wholly and exclusively for the purposes of business.

3 THAT, all the emails of notice hearing were received by Tax Consultant, who never informed appellant about hearing, consequently appellant was precluded from participating in appellate proceedings.

4. THAT, in consequence of impugned order dated 25/01/2023 intrinsically following additions were upheld by Id. NFAC made by AO vide assessment order dated 08/12/2016:-

a. Disallowance of allowable deduction amounting to Rs.6,45,810/- and computing annual rental income at Rs.69,15,810/- and instead of Rs.62,70,000/-.

b. Treating and taxing business receipt amounting to Rs.1,18,760/- as income from other source.

5. THAT, above mentioned ground are without prejudice to each other and appellant craves leaves to add, amend, alter, delete, modify any of the grounds as mentioned above.

2. The brief facts of the case are that the assessee is a partnership firm engaged in the business and filed the return of income for the A.Y 2012-13 on 31.3.2014 disclosing a total income of Rs.18,41,760/- and the return of income was processed u/s 143(1) of the Act. The case was selected for scrutiny under CASS and assessment was completed u/s 143(3) of the Act on 11.03.2015 assessing the total income of Rs.18,66,056/-. Subsequently, the Assessing Officer (AO) has received the information that there is a income escaped assessment and after recording the reasons, has issued notice u/s 148 of the Act. Further the A.O has issued the notice u/s 143(2) and 142(1) of the Act and found that there is no proper compliance by the assessee in spite of providing ample opportunities. The A.O based on the information found that the assessee has credit of Rs. 1,18,760/- as other income and rental income of Rs. 62,70,000/- in the profit and loss account and the assessee has claimed expenditure of Rs.26,65,996/- on various heads which are not expended for earning income from other sources and rent received. Therefore the AO is of the opinion that the entire expenses of Rs. 26,65,996/- claimed by the assessee has to be disallowed and accordingly made addition of Rs. 26,65,996/- and granted deduction u/s 24(a) of the Act from

income from house property and assessed the total income of Rs.49,59,830/- and passed the order u/s 143(3) of the Act dated 08.12.2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, none appeared on behalf of the assessee and the Ld.DR submitted that the assessee was not serious in perusing the appeal and the Ld.DR relied on the order of the CIT(A)

5. We heard the Ld.DR submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing referred at Page 3 Para 3.1 of the order, but there

was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions of the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, we set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the appeal. Accordingly, we allow the grounds of appeal of the assessee for statistical purposes.

6. In the result, the appeal filed by assessee is allowed for statistical purposes.

Order pronounced in the open court on 14.06.2023.

(S RIFAUH RAHMAN)
ACCOUNTANT MEMBER

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 14/06/2023

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.

3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

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आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai